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Your Role as a Private Manager

Decision making

You are free to make decisions within the limits of the powers and authority given to you by the Directions and Authorities document. We will only step in if you act outside those powers or the decision made is significantly flawed or against the best interests of the managed person.

Private managers make decisions that the managed person would normally have made about managing their money. They become what is called a 'substitute decision-maker'.

Any decisions about spending and investing the managed person's money should be carefully considered. Decisions should be made with the aim of maximising the managed person's quality of life within their financial constraints. The interests and views of the managed person come first. It is not the private manager's role to preserve assets for the people who may eventually inherit their estate but to balance expenditure within the financial capacity of the estate.

Consultation

As a private manager you should regularly consult with the managed person about financial matters, if possible.

It is also important to obtain and consider the views of the managed person's immediate family, friends and other people closely involved in the managed person's life such as their appointed guardian.

Consultation on all major financial decisions and submitting a Change in Estate form to us for approval is essential.

Key duties

Some of the activities of a private manager are similar to those you carry out in managing your own finances. You will:

- collect all income and entitlements owing to the managed person
- pay all the managed person's expenses and debts
- ensure that all real estate and other assets such as motor vehicles the managed person owns are insured. You may also need to take out workers compensation or other insurance if carers are employed
- inform relevant authorities such as Centrelink, the Department of Veterans' Affairs and the Australian Taxation Office of any change in the circumstances of the managed person
- keep accurate records of income and expenditure
- lodge tax returns on the managed person's behalf
- ensure all the managed person's important documents, such as their Will and title documents are in a safe place.

As a private manager you also have specific obligations relating to the oversight of your financial management by NSW Trustee & Guardian. These are:

- following any directions given by us
- providing us with all relevant information relating to the financial affairs of the managed person including completing and submitting the Private Manager's Plan and the Change in Estate form when necessary
- providing any security that we request
- lodging accounts of your administration of the managed person's financial affairs
- ensuring that at all times you keep the managed person's financial affairs separate from your own, including using separate bank accounts in the managed person's name
- seeking prior approval from us for expenditure other than day-to-day expenses.

Conflict of interest

As a private manager you may sometimes find yourself in a situation where your personal and financial interests are in conflict with the interests of the managed person.

For example, a conflict of interest would occur if you:

- wanted to borrow money from the managed person's estate
- proposed that either you or a close relative or friend move into the managed person's house
- proposed that the managed person invest money in a company or business in which you or your family has an interest
- sought to gain a greater interest in a deceased estate and in so doing adversely affected the managed person's rights or entitlements.

It is important you recognise when a conflict of interest arises. A private manager needs to remain impartial when making decisions and must keep the interests of the managed person paramount.

If you believe that you have a potential conflict of interest, you should contact your client service team for information and assistance as soon as possible.

Private managers require

our approval to cover

expenses other than general

day-to-day expenses.

Spending

The Directions and Authorities gives you the power to meet a range of day-to-day expenses on behalf of the managed person. These expenses include:

- general living costs such as accommodation, care and medical expenses
- other costs associated with the managed person's property, e.g. rates, taxes, insurance, repairs, electricity, gas and telephone
- any items that will improve the managed person's life e.g. a new wheelchair. A private manager can spend reasonable amounts on these items, taking into account the managed person's financial circumstances
- fees for lawyers, accountants and other professionals. This does not include ongoing costs for legal proceedings
- maintenance and security of property and personal assets.

Spending requiring approval

Private managers require our approval to cover expenses other than general day-to-day expenses.

Examples of items requiring approval include:

- spending on relatives – the managed person may have previously supported other family members and there may even be a legal obligation to provide support
- donations to charity – if the managed person had regularly made donations, it may be reasonable to continue doing so
- proposed expenditure which may not be included in the Directions and Authorities such as buying a car or buying real estate
- reimbursement of expenses.

When thinking about spending of this nature, you should consider whether enough money will be left to meet the managed person's day-to-day, long-term and special needs.

You must complete a Change in Estate form when seeking our approval for the expenditure. The Change in Estate form can be downloaded from www.tag.nsw.gov.au/PMforms or by contacting your client service team. A range of events when it is appropriate for a private manager to use the Change in Estate form are detailed in Appendix 2.

When we assess proposed changes to the estate, we take into account the:

- views of the managed person (if possible) and their family
- best interests of the managed person
- financial resources available.

Any subsequent changes to the estate will be considered in the same way.

We understand that a managed person's circumstances and needs change over time. Therefore, Change in Estate forms can be submitted for approval as life events require. If you have any questions relating to submission of a Change in Estate form please contact your client service team.

Making gifts and loans

Private managers can only make gifts and loans that fall within the requirements of the *NSW Trustee and Guardian Act 2009* Section 76 where:

- the gift is seasonal in nature or for a special event for a relative or close friend of the managed person
- it is a donation that the managed person made when they had capacity to do so or they might reasonably be expected to make
- the value of the gift or donation is not more than what is reasonable with regard to all circumstances of the managed person's financial circumstances and size of the estate.

In other cases, only the Supreme Court can authorise a gift outside of Section 76. You will need to demonstrate why you believe such a gift should be made, the effect on the estate and provide the views, if possible, of the managed person and other immediate family members.

Under the *NSW Trustee & Guardian Act 2009*, NSW Trustee & Guardian may authorise private managers to loan money to the managed person. No loans can be drawn from the managed person's estate unless it has been approved by the Supreme Court.

Contact your client service team to discuss in further detail.

Giving the managed person some financial control

In some circumstances, it is appropriate for the managed person to control some of their own money. This allows them a measure of control and enhances their independence. You can minimise risks around this through informal support and helping them to develop money management skills.

Sometimes a financial management order will allow the managed person to manage an asset or some income themselves. If you think that the managed person should control some of their money, but the financial management order does not permit this, approval needs to be given by us.

Managed person's Will

If possible, you should read the managed person's Will because some of its terms may affect the decisions you make about the estate. For example, if the managed person is leaving a gift of real estate in their Will, you should only consider selling the property if the proceeds are essential to the managed person's ongoing care.

As Wills are confidential documents the contents should not be disclosed to other people.

We may ask you to send us a copy of the managed person's Will.

Guardians

As well as being appointed private manager, you may also be appointed as guardian for the managed person. The Supreme Court of NSW or the Guardianship Division, NCAT may appoint a guardian to make decisions about specific health and lifestyle issues for the managed person.

If a separate guardian is appointed, you should consult with the guardian on all major financial decisions such as choosing suitable accommodation for the managed person.

Payment for private managers

Private managers are not paid for performing their work unless they have first obtained a remuneration order from the Supreme Court of NSW. Once a remuneration order has been obtained from the Supreme Court, we will consider payment of remuneration for work done as a private manager. To receive payment for acting as a private manager, you need to fill out a Change in Estate form. This can be downloaded from www.tag.nsw.gov.au/PMforms or obtained by contacting your client service team.

There are some instances where you may be reimbursed for reasonable out-of-pocket expenses with our approval. This is with the understanding that all family members agree to the payment. You must record all reimbursements of expenses as expenditure in the accounts that you lodge with us. Please contact your client service team for further information.